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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,762	06/02/2000	Dirk Van Hyning	5019	5865
25280	7590	11/15/2006		
MILLIKEN & COMPANY PO BOX 1926 SPARTANBURG, SC 29303			EXAMINER BHAT, NINA	
			ART UNIT	PAPER NUMBER

1764

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

C

Office Action Summary	Application No.	Applicant(s)	
	09/585,762	HYNING, DIRK VAN	
	Examiner	Art Unit	
	N. Bhat	1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-22 and 24-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22 and 24-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 6, 2006 has been entered.
2. Applicant's entire prosecution history has been fully and carefully considered with "fresh eyes". Claims 17-22 and 24-32 are pending in the application. Applicant's arguments with respect to the obviousness rejection over Yokozeki et al. in view of Ghosh are persuasive and accordingly the rejection is withdrawn. Upon updating the search, the examiner has found patents, which are commonly owned to Green et al., and these patents have the same effective filing date as the instant application.
3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 17-22 and 24-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,821,936. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to a treated substrate comprising a finish which includes a metal salt and a binder material, the binder in the instant application is either a melamine formaldehyde resin, acrylic resin, PVC/vinyl copolymer, in the '936 patent the binder is broadly recited to be selected from the group consisting of a nonionic materials, anionic material and mixtures thereof which will broadly read on the instant application's binders. The substrate can be a yarn, a fabric comprised of individual fibers and/or film. The finish is adheres to the substrate surface, the finish is retained in accordance with the wash procedure of AATCC Test Method 130-1981. The only difference between the instant invention and that of the patent is that the metal salt is generically claimed in the instant invention and reads on a silver zirconium phosphate, which is a metal salt. The silver zirconium phosphate is a species of the generic metal salt and to specifically choose silver zirconium phosphate would have been obvious to one having ordinary skill in the art at the time the invention was made. It is maintained that if the instant application were to issue without a timely filed and properly executed Terminal Disclaimer would result in an improper timewise extension of the "right to exclude" granted by a patent.

5. Applicant had argued in the paper of June 6, 2002, that in the 09/589,179 (now abandoned) case to which the 6,821,936 claims continuity therefrom, which requires specific silver containing ion-exchange compounds, zeolites and/or glasses, the silver ions are used for antimicrobial efficacy, whereas the pending claims require metal particles or metal oxides, and that there is no overlap. Applicant is directed to note that the claims recite in a Markush grouping, that the finish includes solid compounds which include metal particles, metal salts, metal oxides and any combination thereof. It is unknown why the previous examiner dropped the rejection however, it is maintained that the silver zirconium phosphate in the '936 patent would read on the metal salt and definitely "any combination thereof" given the broadest reasonable interpretation of the claim.

6. With a timely filed and properly executed Terminal Disclaimer, the application would be in condition for allowance because the prior art does not teach and/or substrate having a finish applied to the surface of the substrate which includes metal particles, metal salts, metal oxides and any combination thereof and at least one binder material selected from the group consisting of melamine-formaldehyde resins, acrylic resins, polyvinyl chloride/vinyl copolymers and mixtures thereof, wherein the finish is durable to stand wash procedures wherein the finish is integrally retained on the portion of the surface substrate after 10 washes performed in accordance with the wash procedure of AATCC Test Method 130-1981, in an amount of at least 30% of the amount of the finish present on the surface of the substrate is retained on the substrate

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prior to the performance of any wash procedure resulting in a fabric or substrate including a finish which is durable to multiple laundering cycles.

7. The art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2 185 998 teaches a plant tissue culturing substrate, which includes a substrate including a metal salt, transition metal oxide, glass fibers and a binder, which includes melamine or styrene binder. 2002/0127402 teaches topical incorporation of solid antimicrobial compounds on yarn surfaces through high-pressure methods. 2002/0192386 teaches textiles having a durable silver ion based antimicrobial topical treatment. Green et al. '433 teach durable antimicrobial treatments for textiles having a silver ion based antimicrobial topical treatment. 2003/0204916 teaches textiles having a wash durable silver ion based antimicrobial treatment. 2003/0200613 teaches topical incorporation of solid antimicrobial on yarn surfaces using high-pressure methods. 2003/0026914 teaches yarns and fabrics having wash durable non-electrically conductive topically applied metal based finishes. 2004/0009344 (not prior art) teach pigmented alkyoxyzirconium sol which is applied as a surface treatment to fabric. Tran 0029328 and 0198209 (not prior art) teach nano-particles on fabric or textile having wash durability. Dixon et al. (not prior art) teach insecticidally treated fabric having improved wash durability and insecticidal efficacy and method for its production.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



N. Bhat
Primary Examiner
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